

BILL NO. S-76-04-33

SPECIAL ORDINANCE NO. S- 90-76

AN ORDINANCE approving a contract with Colony Heights, Inc. for construction of a sanitary sewer.


BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the contract dated April 5, 1976, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Colony Heights, Inc., for the construction of sanitary sewers to serve Crown Colony, Section "H", of which the developer shall pay the entire cost and expense of the construction of said sewer, all as more particularly set forth in said contract which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. This Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.



Councilman

APPROVED AS TO FORM
AND LEGALITY.


CITY ATTORNEY

Read the first time in full and on motion by Moses, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on the _____ day of _____, 1976, at _____ o'clock P.M., E.S.T.

Date: 4-13-76 Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by D. Schmidt, seconded by Hinga, and duly adopted, placed on its passage. Passed (lost) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>8</u>			<u>1</u>	
BURNS	<u>✓</u>				
HINGA	<u>✓</u>				
HUNTER	<u>✓</u>				
MOSES				<u>✓</u>	
NUCKOLS	<u>✓</u>				
SCHMIDT, D.	<u>✓</u>				
SCHMIDT, V.	<u>✓</u>				
STIER	<u>✓</u>				
TALARICO	<u>✓</u>				

Date: 4-27-76 Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. 2-90-76 on the 27th day of April, 1976.

ATTEST: Charles W. Westerman
CITY CLERK

(SEAL)

James Stier
PRESIDENT OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of April, 1976, at the hour of 11:00 o'clock A. M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 28th day of April, 1976, at the hour of 4:30 o'clock P. M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-76-04-33

REPORT OF THE COMMITTEE ON PUBLIC WORKS

We, your Committee on Public Works to whom was referred an Ordinance
approving a contract with Colony Heights, Inc. for construction of a sanitary sewer.

have had said Ordinance under consideration and beg leave to report back to the Common
Council that said Ordinance Do PASS.

Winfield C. Moses, Jr. - Chairman

Donald J. Schmidt - Vice-Chairman

Vivian G. Schmidt

Paul M. Burns

William T. Hinga

D. Schmidt
Vivian G. Schmidt
Paul M. Burns
William T. Hinga

DATE 4-27-76 CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

63-97-11 H.I.
4/5/76

AGREEMENT
FOR
SEWER EXTENSION

THIS AGREEMENT, made in triplicate this 5 day of April, 1976,
by and between COLONY HEIGHTS, INC., hereinafter referred to as "Developer", and
the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter
referred to as "City"

WITNESSETH:

WHEREAS, the Developer desires to construct a sanitary sewer for Crown Colony,
Section "H" described as follows:

Lateral #1

Beginning at an existing manhole located at the southeast corner of the inter-
section of Chadwick Drive and Leighton Lane; thence due east 600+ LF parallel to
the south right-of-way line of Leighton Lane, terminating at a proposed manhole
located at the northeast corner of Lot No. 286 of said addition.

Lateral #2

Beginning at a proposed manhole located 15+ LF north of and 40+ LF east of the
northwest corner of Lot No. 266 of said addition; thence due east 580+ LF parallel
to south right-of-way line of Moorfield Lane, terminating at a proposed manhole
located at the northeast corner of Lot No. 273 of said addition.

Said sewer shall be 8 inches in diameter in accordance with plans, specifi-
cations and profiles heretofore submitted to the City and now on file in the office
of the Chief Water Pollution Control Engineer of the City Utilities of the City,
and known as CROWN COLONY, SECTION "H", which plans, specifications and profiles
are by reference incorporated herein and made a part hereof.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants
and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The Developer shall cause said sewer to be constructed and located in
accordance with said plans, specifications and profiles, all approved by the City,
under private contract to be let within sixty (60) days after requisite City
approval. All work and materials shall be subject to inspection by City and the
right of City to halt construction if there shall be non-compliance therewith. Said
sewer shall not be deemed permanently connected into the sewer system of City until
payment of all connection fees and final acceptance by City. Upon completion, said

sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City engineering and inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER

Said sewer, when accepted by the City, will serve the following described real estate:

Part of Lot #222, together with part of Lot #223, both in Crown Colony, Section "F", as recorded in Plat Book 36, Pages 105-107 in the Office of the Recorder of Allen County, Indiana, together with part of the Southeast Quarter of Section 29, Township 30 North, Range 13 East, Allen County, Indiana, all being more particularly described as follows, to wit:

Commencing at the Southwest corner of said Southeast Quarter; thence N 90°-00' E, on and along the South line of said Southeast Quarter, being also the centerline of Tillman Road, 613.0 feet to the Southeast corner of Crown Colony, Section "D", a subdivision in said Southeast Quarter; thence N 07°-07'-30" W, on and along the East line of said Crown Colony, Section "D", a distance of 995.20 feet to the Southwest corner of said Crown Colony, Section "F"; thence N 80°-38' E, on and along the Southerly line of said Crown Colony, Section "F", a distance of 118.0 feet; thence S 66°-37' E, continuing along said Southerly line, 454.83 feet to the Southeast corner of Lot #219 in said Crown Colony, Section "F", said Southeast corner being the true point of beginning; thence N 23°-22' E, on and along the Easterly lines of Lots #219, #220, #221 and #222, a distance of 436.7 feet to a point situated 40.0 feet Southwesterly of the Northeast corner at said Lot #222; thence N 66°-01' W, and parallel to the Northerly line of said Lot #222, a distance of 114.83 feet to a point situated 10.0 feet Southeasterly of the Westerly line of said Lot #222; thence S 68°-40'-30" W, 14.07 feet to the Westerly line of said Lot #222 at a point situated 50.0 feet Southwesterly of the Northwest corner thereof; thence N 23°-22' E, on and along said Westerly line and

the Westerly line of Lot #223 in said Crown Colony, Section "F", being also the Easterly right-of-way line of Chadwick Drive, 70.0 feet to a point situated 20.0 feet Northeasterly of the Southwest corner of said Lot #223; thence S 21° -19'-30" E, 14.22 feet to a point situated 10.0 feet (measured at right angles) Northeasterly of the Southerly line of said Lot #223 and 10.0 feet Southeasterly of the Westerly line of said Lot #223; thence S 66° -01' E, and parallel to the Southerly line of said Lot #223, a distance of 114.83 feet to the Easterly line of said Lot #223; thence N 23° -22' E, on and along said Easterly line, 103.4 feet to the Northeast corner of said Lot #223; thence N 19° -21' E, on and along the Easterly line of Lot #224 in said Crown Colony, Section "F", a distance of 120.0 feet to the Southerly right-of-way line of Richfield Lane as platted in Crown Colony, Section "G", as recorded in Plat Book 37, Pages 51 and 52 in the Office of the Recorder of Allen County, Indiana; thence S 74° -41' E, on and along said Southerly right-of-way line, 272.9 feet to the point of curvature of a regular curve to the left having a radius of 545.81 feet; thence Easterly on and along the arc of said curve, and continuing along said Southerly right-of-way line, 101.00 feet (the chord of which bears S 79° -59' E for a length of 100.86 feet); thence S 00° -01' W, 262.54 feet; thence N 89° -59' W, 35.87 feet; thence S 00° -01' W, 300.0 feet; thence S 89° -59' E, 14.63 feet; thence S 00° -01' W, 150.0 feet to the North line of Lot #65 in Crown Colony, Section "B", as recorded in Plat Book 30, Pages 124 and 125 in the Office of the Allen County, Indiana; thence N 89° -59' W, on and along the North lines of Lots #65, #66 and #67 in said Crown Colony, Section "B", a distance of 240.9 feet to the Northeast corner of Lot #12 in Crown Colony, Section "A", Amended, as recorded in Plat Book 31, Pages 46 and 47 in the Office of the Recorder of Allen County, Indiana; thence N 88° -44' W, on and along the Northerly line of said Lot #12, a distance of 35.40 feet; thence N 66° -37' W (recorded N 66° -41' W) on and along the North line of said Lot #12 and also Lots #38 and #14 in said Crown Colony, Section "A", Amended, a distance of 368.87 feet to the true point of beginning, containing 8.445 acres of land.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this

Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom.

4. BOND

This contract is subject to Developer furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

5. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only, and neither the parties hereto, their successors, or assigns, or any future owner of land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

6. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The Developer, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending of future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Developer, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Developer further agrees that any deeds, contracts, or other instruments of conveyance made by the Developer, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article herein shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any instrument from the Developer, his successors and assigns by a grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee or contract purchaser and their successors in title.

The Developer further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

7. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17 and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (Burns Indiana Statutes Anno., 1968 Supple., Sections 48-3963, 3964 and 3965), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

8. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER:

COLONY HEIGHTS, INC

BY: F. E. Schouweiler

F. E. Schouweiler, President

CITY OF FORT WAYNE, INDIANA

BY: Robert E. Armstrong

Robert E. Armstrong, Mayor

BOARD OF PUBLIC WORKS

BY: Henry P. Wehrenberg

Henry P. Wehrenberg, Chairman

BY: Ethel H. LaMar

Ethel H. LaMar, Member

BY: Max G. Scott

Max G. Scott, Member

ATTEST:

Ursula Miller
Clerk

Approved as to form and legality:

Philip R. Boller
City Attorney

This instrument prepared by Philip R. Boller, Chief Water Pollution Control Engineer

STATE OF INDIANA
SS:
COUNTY OF ALLEN

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Robert E. Armstrong, Mayor, Henry P. Wehrenberg, Chairman of the Board of Public Works, Ethel H. LaMar and Max G. Scott, Members of the Board of Public Works; Ursula Miller, Clerk of the Board of Public Works; and Larry Burke, Associate City Attorney, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 5th day of April,
1976.

Anne J. Zol
Notary Public

My Commission Expires:

March 6, 1980

STATE OF INDIANA
SS:
COUNTY OF ALLEN

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared F. E. Schouweiler, who acknowledged the execution of the foregoing Agreement for sewer extension, as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 19th day of March,
1976.

Stephanie D. Andrews
Notary Public
Stephanie D. Andrews

My Commission Expires:

July 20, 1976

ENGINEERING DEPARTMENT

FORT WAYNE, INDIANA 46802

I, J. D. Brown, rep

I, John J. Houder, representative for
Colony Heights, Inc., hereby agree to any and
all reasonable sewer inspection fees that may be incurred on Work
Request No. _____.

STATE OF INDIANA)
COUNTY OF ALLEN)SS:

BEFORE ME, a Notary Public, in and for said County and State, this 19th day of March, 1976, personally appeared F.E.Schouweiler, and acknowledged said instrument to be his voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Stephanie D. Andrews
Notary Public
Stephanie D. Andrews

My Commission Expires:

July 20, 1976.

TITLE OF ORDINANCE Special Ordinance - Sewer Extension Agreement

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

S-76-04-33

SYNOPSIS OF ORDINANCE Ordinance covers an Agreement between the City of Fort

Wayne and Colony Heights, Inc. for construction of sanitary sewers to

serve Crown Colony, Section "H", which development is outside the City

Limits.

~~_____~~

EFFECT OF PASSAGE Provides for sanitary sewer service to customers outside

City Limits. Sewage revenue to the Utility.

EFFECT OF NON-PASSAGE Failure of City to provide amply sanitary sewer service

where possible

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) All costs including City

engineering and inspection shall be paid by the developer.

ASSIGNED TO COMMITTEE *Rollins WKS JR.*